COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 10 of 2002

National Insurance Co. Ltd.
& another …. **Appellants.**

Versus

Sri Sain Das
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 4-10-2001 passed in M.A.C. Case No. 3 of 2000 Sain Das & others Vs. Dalbeer Singh & others, by Motor Accident Claims Tribunal Chamoli ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.1,00,000/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimants–respondents against the O.P. No. 2-appellant under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that there has been breach of policy conditions in respect of the Jeep involved in the accident as the driver of the vehicle was holding a valid driving licence on the date of accident; that on finding has been recorded on this point and the Tribunal has failed to appreciate the evidence on record.

On the other hand, the claimants have filed cross-objection No. 5440 of 2004, under Order 41, Rule 22 of the Civil Procedure Code with a prayer to enhance the award on the ground that the amount of compensation awarded for the death of the

deceased is inadequate and insufficient because the learned Tribunal has assessed the income of the deceased as Rs. 12,000/- per annum, while as per Second Schedule of Section 163-A of the Act, the income of the deceased ought to have been taken as Rs. 15,000/- per annum and that the multiplier of 10 has been wrongly applied instead of 15 in the present case, because the deceased was aged 38 years.

Brief facts, giving rise to the present appeal, are that Smt. Kamla Devi (the deceased) has died as a result of injuries sustained by her in a motor accident on 21.11.1999 at 11 am. Involving Jeep No. U.G.A.-7429 driven rashly and negligently by its driver. The deceased was aged 38 years and was earning more than Rs. 5,000/- per month. Hence the claim petition has been field by the legal heirs and dependents of the deceased. The O.P. No.1, driver of the offending Jeep, as well as the insurer-appellant filed their separate written statement and contested the case. The learned Tribunal framed necessary issues in the case. Ultimately, the learned Tribunal has held on Issue No.1 that the deceased Kamla Devi died as a result of injuries sustained by her in the accident due to rash and negligent driving by the driver of offending Jeep No. UGA-7429. On Issue No.2, the Tribunal has observed that the income of the deceased is proved on record at Rs. 12,000/- per annum. The Tribunal has applied multiplier of 10 to determine loss of dependency and ultimately, has awarded sum of Rs. 1,00,000/- in favour of the claimants. It has also been found by the Tribunal has the owner of the vehicle was possessing all valid papers in respect of the offending Jeep and the Jeep was duly insured on the date of accident. The Tribunal has, therefore, fastened the liability to pay compensation on the appellant.

We have herd learned counsel for the appellant, Sri K.K.Sah, as well as learned counsel for the claimant-respondents, Sri Pankaj Purohit, and have carefully gone through the material on record including the impugned judgment and award.

The only point pressed in appeal on behalf of the Insurance Company-appellant is that the driver Dalbeer Singh, who was driving the offending Jeep, was not holding a valid driving licence. It has been submitted open behalf of the appellant that the motor accident in the present case had occurred on 21.11.1999 and the driving licence in the name of driver Dalbeer Singh was issued on 21.12.1999, i.e. subsequent to the date of accident, therefore, it has been argued that there is breach of policy conditions and the Insurance Company cannot be held liable for compensation. We have been referred to Annexure 1 and Annexure-2 which are duplicate copy of the alleged driving licence and photo copy of report obtained from the Cleansing Authority of Pauri Garhwal dated 23.2.2001. We have considered the submissions of the learned counsel form all the four corners of the controversy in the light of the impugned judgment and award. It is true that the learned Tribunal has not recorded a categorical finding whether the driver Dalbeer Singh was holding a valid driving licence on the date of accident. The relevant provisions of the Motor Vehicles Act, 1988 were dealt with by the Hon'ble Apex Court in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" (2004(3), S.C.C., 297)*** and the Hon'bel Supreme Court in ***SUMMARY OF FINDINGS, i.e. para 110(iii)*** *has observed that* ***"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."*** Thus, in view of the settled view on the point, the Insurance Company cannot be absolved from its liability to pay the compensation amount. This is a dispute between the Insurance Company and the owner of the vehicle. Therefore, in view of the pronouncement of the Hon'ble Apex Court in the case of ***"Swaran Singh"*** (supra) it will be just and

proper to direct to appellant-Insurance Company first to satisfy the entire decretal amount under the impugned award before the executing court/learned Tribunal and then to file its objections before the Tribunal for redressal of its grievances on the point of fake driving licence. Then, the Tribunal after affording opportunity of hearing to the owner of the vehicle shall decide the controversy on the point of driving licence and its effect in accordance with the principles of law laid down by the Hon'ble Supreme Court and the Act. In case, the finding of the Tribunal finds favour with the contention of the appellant-Insurance Company, the appellant shall be at liberty to recover the amount of compensation paid by it from the owner of the vehicle.

As regards cross-objections filed in this appeal by the claimants, the cross-objections shall also be considered by the lenred Tribunal at the time when the issue of fake driving licence is disposed of by it.

No other point was urged or argued before us in this appeal.

With the aforesaid observations, the appeal is disposed of finally. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

24-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP